IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.3.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.1158 of 2000

Thiru Arooran Sugars Ltd.
Eldorado, 5th Floor
No.112, Nungambakkam High Road
Chennai 600 034. .. Appellant

Vs.

1. The State Industries Promotion
Corporation of Tamil Nadu Limited
No.19-A, Rukmani Lakshmipathi Road
Egmore, Chennai 600 008.

2. The Assistant Commissioner (CT)
Zone IV, Chennai 600 006.

3. The Assistant Commissioner (CT)
Central Assessment Circle IV
Chennai 600 006. .. Respondents

Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 22.6.2000 made in W.P.No.4275 of 1999 a Writ of Certiorarified Mandamus quashing the proceedings of the first respondent herein in ID/ST/TASL/99 dated 01.03.1999 while directing the said first respondent to amend the eligibility certificate deleting the words "Sales Tax benefit for the period from 01.09.1998 to 31.10.1999 will be restricted to actual sales Tax remitted during the period from 01.09.1993 to 31.10.1994 occurring in the amendment certificate dated 16.08.1995 of the first respondent.

For Appellant : Mr.C.Natarajan, S.C.
For Mr.N.Inbarajan
For Respondent-1 : Mr.P.S.Seetharaman
For Respondents 2&3 : Mr.Haja Nazirudeen, Spl.G.P.

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J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The unsuccessful writ petitioner is the appellant in the above appeal preferred against the order dated 22.6.2000 made in W.P.No.4275 of 1999, under the following facts and circumstances of the case.

2. For the purpose of convenience, parties are arrayed as per their rank in the writ petition.

3.1. The Government of Tamil Nadu, with a view to promote industrialization, introduced an Interest free Sales Tax Deferral Scheme in G.O.Ms.No.500, Industries (MIG-II) Department, dated 14.5.1990, as per which the State Industries Promotion Corporation of Tamil Nadu Ltd., the second respondent herein (in short 'SIPCOT') is the authorised agency to receive applications, sanction and disburse for medium and major industries and also to assess the eligibility of a new industry and issue eligibility certificate under the scheme. The said G.O.Ms.No.500, Industries (MIG-II) Department, dated 14.5.1990 reads as under:

"GOVERNMENT OF TAMIL NADU
ABSTRACT

Industries - Declaration of Most backward taluks - Incentive schemes for industries - Interest free sales tax scheme - Further liberalisation - order - issued.

INDUSTRIES (MIG-II) DEPARTMENT

G.O.Ms.No.500 Dated: 14.5.1990

Read:

1. G.O.Ms.No.305, Industries, dated 22.5.1989
2. G.O.Ms.No.423, Industries, dated 7.7.1989
3. G.O.Ms.No.563, Industries, dated 19.8.1989
4. G.O.Ms.No.564, Industries, dated 19.8.1989

ORDER:

The Government in the order second read above declared 105 taluks of this State as industrially backward for the purposes of grant of interest free sales tax loan, interest free sales tax deferral,state capital subsidy, etc.

2. With a view to correct regional imbalances in the industrialisation in the State by giving further incentives to more backward areas, the Government direct that 30 taluks, from among the 105 industrially backward taluk be declared as industrially most backward taluks. The names of 30 taluks are annexed to this order.

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3. The Government direct that the new industries to be set up in the 30 most backward taluks ordered in para 2 above and also in the three industrial complexes of State Industries Promotion Corporation of Tamil Nadu at Pudukottai, Cuddalore and Manamadurai be eligible apart from other existing concessions for full waiver of sales tax dues for a period of five years upto a ceiling of the total investment made in fixed assets. Existing industries in the most backward taluks and in the three State Industries Promotion Corporation of Tamil Nadu (SIPCOT) complexes, undertaking expansion / diversification are also eligible for full waiver of sales tax dues for a period of five years subject to a ceiling of the total investment in fixed assets under expansion / diversification.

4. With a view to encourage more industries in Tamil Nadu, the Government direct that the following concessions also be made available to the industries:

(a) For the industries to be started in the 75 backward taluks i.e. Other than the 30 most backward taluks, from among the 105 backward taluks, and in the industrial estates developed by any of the Government agencies including Madras Export Processing Zone, Madras Metropolitan Development Authority, the scheme of interest free sales tax loan/deferral ordered in the Government order first, third and fourth read above is modified as follows:

(i) For the existing units undertaking expansion or diversification, deferral of sales tax will be given for nine years and the total amount thus given shall not exceed 80% of the additional investment made in fixed assets.

(ii) For the new units, the total amount of deferral of sales tax will be given for nine years to the full extent of the total investment made in fixed assets.

(b) The interest free sales tax deferral scheme is extended to the expansion (Part-I) as well as to the starting of new industries (Part-II) in the other areas also, where this scheme was not in vogue hitherto. The deferral of sales tax for the industries in these area will be for five years subject to a maximum of 60% of the total investment made in fixed assets in the case of new industries and 50% of the additional investment in fixed assets made in the case of expansion/diversification, of the existing industries.

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(c) As a gesture to the industries to be set up in any part of Tamil Nadu with an invest in fixed assets of more than Rs.50 crores, a special incentive of deferral of sales tax for a period of 9 years to the extent of total investment made in fixed assets will be given. This deferral concession will also be available to the existing industries going in for expansion / diversification with an additional investment in fixed assets for more than Rs.50 crores.

5. The sales tax deferral / waiver of expansion / diversification ordered in paras 3-4 above is subject to the sales tax payable on products manufactured by the capacity created by expansion / diversification units only.

6. The industries in the Most backward taluks and in the SIPCOT Complexes at Cuddalore, Manamadurai and Pudukottai can opt either for the full waiver of sales tax for a period of five years ordered in para 3 above or for the deferral of sales tax for nine years as applicable to the industries in the backward taluks ordered in para 4(a) above. The option should be exercised along with the application to be submitted to the authority for issuing eligibility certificate. The option once exercised and accepted will be final and cannot be changed.

7. The application for interest free sales tax deferral should be filed before the General Manager, District Industries Centre concerned in the case of small scale industries and before SIPCOT in the case of medium and major industries before the commencement of commercial production.

8. The above scheme will be applicable to small, medium and major industries as the case may be. The deferral / waiver period will commence from the date of commencement of commercial production after the completion of the envisaged project. Such commencement shall be on or after the date of issue of this order, for eligible units.

9. The General Manager, District Industries Centre and SIPCOT will be the competent authorities to issue eligible certificates in respect to Small Scale industries and major and medium industries respectively. The respective sales tax assessing authority will assess the sales tax liability of the units for each year. The sales tax authorities concerned, based on the assessments will raise demands for deferral of sales tax without interest or waiver of sales tax after commencement of production by the units. But the tax payable for the year will be deferred / waived within the overall ceiling for which the

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eligibility certificate issued by the authority. The deferred instalments shall be payable by the assessed units after the completion of the period of deferral together with the sales tax of the current year, without any interest thereon. In the case the units avails the complete deferral / waiver benefit before the completion of specified deferment period of 5 years or 9 years as the case may be, the unit has to pay the normal sales tax immediately after the date of full availment of eligible deferral amount. The assessee of the unit for which the sales tax has been waived will start paying the current sales tax dues after the completion of the waiver period or immediately after the full availment of eligible waiver amount, whichever is earlier. However, the deferred amount of sales tax for 5 years or 9 years as the case may be, has to be paid after the completion of the deferral period along with the current dues, i.e. In the case of deferral of 9 years the amount deferred in the first year being payable along with the sales tax due in the 10th year, the amount deferred in the second year being payable along with the sales tax dues in the 11th year and so on.

10. All eligible units which have commenced production before the date of issue of this order will be eligible for interest free sales tax loan / deferral, as per the order existing on the date of commencement of production. Units which have availed interest free sales tax loan under existing schemes, may opt for the deferral facility to the extent of uncompleted period and unutilised amount of the earlier scheme.

11. The original project in a taluk may go in for expansion / diversification in the same taluk where the original project is located or in any other taluk and avail the interest free sales tax deferral / waiver concession. However, this concession would be granted for one expansion / diversification only if carried out in the same taluk where the original project is located.

12. Second-hand machinery will not be part of the investment eligible to the computation of deferral or waiver of sales tax.

13. This order modifies all the previous orders available on the subject matter, to the extent to which the scheme has been covered by this order.

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14. This order issued with the concurrence of Commercial Taxes and Religious Endowment and Finance Department vide their U.O.No.20626/B2-90-1 dated 2.5.1990 and U.O.No.2674/F9/P/90, dated 7.5.1990 respectively.

/By order of the Governor/

M.M.Rajendran,
Chief Secretary to Government"

(emphasis supplied)

3.2. Pursuant to the above G.O., the Government directed the State Industries Promotion Corporation of Tamil Nadu Ltd., the first respondent herein (in short 'SIPCOT') to issue an eligibility certificate for sales tax waiver/deferral, at the request of the entrepreneurs.

3.3. Accordingly, the writ petitioner applied for eligibility certificate for availing waiver of sales tax on 20.11.1993 for their new industrial unit set up in Papanasam Taluk, Thanjavur District. After scrutinising the said application, the SIPCOT, by their proceedings dated 6.12.1994, issued eligibility certificate for waiver of sales tax for a sum not exceeding Rs.1044.21 lakhs for a period of five years from the month in which the holder's unit commenced its commercial production, i.e. from 1.9.1993 to 31.8.1998. Obviously, there was a delay in issuing the eligibility certificate.

3.4. In view of the delay in issuing the eligibility certificate, the petitioner was constrained to pay the sales tax for the period from 1.9.1993 to 6.12.1994. Therefore, the petitioner, by letter dated 20.12.1994, placing reliance on G.O.Ms.No.500, Industries (MIG-II) Department, dated 14.5.1990, requested for refund of the tax already paid by them during the period from 1.9.1993 to 6.12.1994. The said request was rejected by the revenue by proceedings dated 25.1.1995.

3.5. The petitioner preferred W.P.No.1851 of 1995 challenging the proceedings of the revenue dated 25.1.1995. In the said writ petition, the revenue fairly conceded that the petitioner was entitled to the benefit of the scheme of waiver of sales tax from the date of its commercial production, viz. 1.9.1993 and contended that the petitioner could apply for waiver of sales tax within a period of one year from the date of commercial production and the competent authority could grant the same. However, as the respondent had to complete the assessment for the assessment years 1993-94 and 1994-95 on or before 31.3.1994 and 30.4.1995 respectively, the writ petition was disposed of, by order dated 24.2.1995, with a direction to the Assessing Officer to pass an order of assessment within the period and for refund of the claim.

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3.6. With the above background, the SIPCOT, by proceedings dated 16.8.1995, rescheduled the waiver period from 1.11.1994 to 31.10.1999 and also directed that the sales tax benefit for the period from 1.9.1998 to 31.10.1999 would be restricted to actual sales tax remitted during the period from 1.9.1993 to 31.10.1994.

3.7. Pursuant to the above proceedings rescheduling the period of eligibility of waiver of sales tax, the SIPCOT, again, by proceedings dated 1.3.1999, stipulated that the sales tax benefit for the period 1.9.1998 to 31.10.1999 would be restricted to actual sales tax remitted during the period from 1.9.1993 to 31.10.1994.

3.8. Aggrieved by the said proceedings, the petitioner filed W.P.No.4275 of 1999 seeking a writ of Certiorarified Mandamus to call for the records on the file of the first respondent therein in letter NO.IT/ST/TASL/99 dated 1.3.1999, quash the same and to direct the first respondent to amend the eligibility certificate deleting the words "the sales tax benefit for the period from 1.9.1998 to 31.10.1999 would be restricted to actual sales tax remitted during the period from 1.9.1993 to 31.10.1994" occurring in the amendment certificate dated 16.8.1995.

3.9. The revenue, in its detailed counter affidavit, have not disputed the following vital details, viz. the total investment of the petitioner was Rs.1044.21 lakhs; the petitioner commenced their commercial production on 1.9.1993; the petitioner filed the application for issuance of eligibility certificate claiming waiver of sales tax on 20.11.1993; the eligibility certificate was issued by the SIPCOT only on 6.12.1994 for waiver of sales tax for a sum not exceeding the total investment of Rs.1044.21 lakhs for a period of five years from 1.9.1993 to 31.8.1998; and however, the period of eligibility for waiver of sales tax was rescheduled from 1.11.1994 to 31.10.1999 and the sales tax benefit for the period from 1.9.1998 to 31.10.1999 would be restricted to the actual sales tax remitted during the period from 1.9.1993 to 31.10.1994.

3.10. After considering the claim of the petitioner as well as the impugned proceedings, the learned single judge, by order dated 22.6.1990, dismissed the writ petition, observing that while rescheduling the said period, the SIPCOT imposed the restriction to enable the petitioner to get back the sales tax paid for the period from 1.9.1993 to 31.10.1994, thereby allowing the petitioner to enjoy the benefit for full five years from 1.9.1993 itself and therefore, the petitioner would not have any grievance by such rescheduling of the waiver period with restriction, dismissed the writ petition. Hence, the appeal.

4. According to Mr.C.Natarajan, learned senior counsel for the appellant, as there is no dispute that the petitioner is entitled for waiver of sales tax for a maximum period of five years subject to the

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ceiling of the total investment made in the fixed assets, viz. to the tune of Rs.1044.21 lakhs, as mentioned in the eligibility certificate, the petitioner is entitled to the waiver of the sales tax for the rescheduled period from 1.11.1994 to 31.10.1999 without any restriction to a ceiling of the total investment made in the fixed assets, viz. Rs.1044.21 lakhs. As a result, the restriction imposed in the proceedings dated 16.8.1995 as well as the consequential proceedings dated 1.3.1999 to the effect sales tax benefit for the period from 1.9.1998 to 31.10.1999 will be restricted to the actual sales tax remitted during the period 1.9.1993 to 31.10.1994, is not sustainable in law, as the same is contrary to the spirit and substance of G.O.Ms.No.500, Industries (MIG-II) Department, dated 14.5.1990. In any event, the SIPCOT being the certifying authority has no jurisdiction either to restrict the benefit conferred on the petitioner by virtue of G.O.Ms.No.500, Industries (MIG-II) Department, dated 14.5.1990, nor to deny any part of such benefit relating to the waiver of sales tax.

5. Mr.Haja Nazirudeen, learned Special Government Pleader appearing for the revenue as well as SIPCOT, reiterated his contentions to sustain the impugned proceedings as well as the order of the learned single judge.

6.1. The power of taxation can be used not merely for raising the revenue, but also to regulate the economy, to promote the industrialisation and to encourage the investment for expansion or diversification of the existing industries and to develop new industries.

6.2. Our country is emerging as a major power with the goal aiming:

(i) to maintain a sustained growth in productivity;
(ii) to enhance gainful employment;
(iii) to achieve optimal utilization of human resources;
(iv) to attain international competitiveness; and
(v) to transform India into a major partner and player in the global arena.

6.3. In the process of meeting the challenges that come across the globalization of economy, industry, trade and commerce, the Government have come forward with liberalization schemes such as, granting certain exemptions in respect of tax payable on the turnover of the sale of goods produced and sold by the new or expanded or diversified industrial units, of course, subject to the directions, qualifications and the terms and conditions prescribed in the scheme, eligibility certificate and the consequential agreements, with a view to boost the industrialisation by

(i) deregulating Indian Industry,
(ii) allowing the industry freedom and flexibility in responding to market forces, and
(iii) providing a policy regime that facilitates and fosters growth of Indian Industry.

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6.4. The power to maintain economic unity includes the power to grant exemptions or to reduce the rate of interest or defer or waive the sales tax as a special case for achieving the industrial development and to provide certain tax incentives which is also intended to attain the economic equality in the growth and development. The economic development of the State to bring it into equality with all other States and thereby develop the economic unity of India is one of the major commitments or the goals of the constitutional aspirations of this land.

6.5. The Government of Tamil Nadu, enunciating the above new industrial policy in the national context of economy in transition, have come forward with the constructive incentives such as, Sales-tax Deferral/Sales-tax Waiver invoking the statutory power conferred on them under the relevant statutes, viz., TNGST Act and CST Act, in order to create a congenial atmosphere to the industries for stimulating rapid growth of industrialisation in the State, so that the State economy will grow faster and these incentives have been proposed to enhance the competitiveness of the State and also foster the pace of industrialisation in this part of the country.

6.6. It is a settled law that fiscal laws must be strictly construed and the words must say what they mean and nothing should be presumed or implied. It is also a trite that the principle that fiscal statutes should be strictly construed does not rule out the application of the principle of reasonable construction to give effect to the purpose or intention of any particular provision as apparent from the scheme of the Act, with the assistance of such external aids, as are permissible under law [SHREE SAJJAN MILLS LTD. v. COMMISSIONER OF INCOME TAX, M.P. BHOPAL, 1986 TAX LAW REPORTER 48].

6.7. In order to apply the principle of reasonable construction to give effect to the purpose or intention of the provision, as apparent from the scheme of the Act, the Court must endeavour to harmonise the source of the Schemes as well as the regulatory procedure, because the statute should be interpreted in such a way to avoid absurdity and oracular interpretation and to have harmonious construction to advance the implementation of the schemes and to make them workable, unless it is impossible to do so, rather than making it meaningless.

7.1. This leads us to refer back the intention behind the Sales Tax Deferral/Waiver Scheme. The power conferred on the State to notify the Schemes, either for deferral or waiver, is nothing but a concession or a freedom from an statutory obligation which an exemptee is otherwise liable to discharge. It is a privilege granted, not available to all others. Therefore, an exemption, thus granted under statutory provisions of a fiscal statute is held to be a concession granted, so that the beneficiaries of such concession are required to pay the tax after the deferral period in case of deferral of sales tax or required not to pay tax during the waiver period in the case of waiver of sales tax, which

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they are otherwise liable to pay under the statute. Hence, the recipients of such concession have no legally enforceable right against the Government to grant a concession except to enjoy the benefits of the concession during the period of its grant. This right to enjoy is a defeasible one as it may be taken away in simpliciter or on the ground of violation of the conditions prescribed under the respective schemes, in exercise of the very power under which the exemption was granted. Either for declaring or for withdrawing such exemption in the case of deferral or waiver, the cardinal principle is that the same must be exercised in the public interest and not otherwise [vide: State of Rajasthan v. J.K.Udaipur Udyog Ltd. (2004) 7 SCC 673].

7.2. In the instant case, it is not in dispute that the total investment of the petitioner is Rs.1044.21 lakhs and the commercial production was commenced on 1.9.1993 and consequently, they are eligible for waiver of sales tax for a period from 1.9.1993 to 31.8.1998 subject to the ceiling of total investment made in fixed assets. But, merely because the eligibility certificate was issued by the SIPCOT on 16.12.1994, where under, the above factual details were not disputed, the certifying authority cannot, at any stretch of imagination, by the impugned proceedings, while rescheduling the period of five years from 1.11.1994 to 31.10.1999, restrict the quantum of waiver of sales tax benefit to the actual sales tax remitted during the period from 1.9.1993 to 31.10.1994, as, such attempt would be contrary to the spirit and substance of G.O.Ms.No.500, Industries (MIG-II) Department, dated 14.5.1990.

7.3. We, therefore, have no hesitation to hold that the petitioner is entitled to the maximum extent of waiver of Rs.1044.21 lakhs without any restriction.

7.4. Of course, the learned single judge has observed that the SIPCOT,while rescheduling the period, imposed the restriction to enable the petitioner to get back the sales tax paid for the period from 1.9.1993 to 31.10.1994, thereby allowing the petitioner to enjoy the benefit for full five years from 1.9.1993 itself and therefore, the petitioner would not have any grievance by such rescheduling of the waiver period with restriction. The above observation of the learned single judge remains unchallenged by the revenue also. However, the fact remains that neither the proceedings dated 16.8.1995 nor the proceedings dated 1.3.1999 enable the petitioner to get back the sales tax for the period of 1.9.1993 to 31.10.1994, viz. to the tune of Rs.1044.21 lakhs.

7.5. If the petitioner is entitled to get back the said sales tax paid during the period of 1.9.1993 to 31.8.1994, we are of the considered opinion that the revenue would be greatly deprived, as the petitioner would be entitled to the said amount with the statutory interest of 12% per annum. In any event, the said observation of the learned single Judge, in our considered opinion, does not fit into the impugned proceedings dated 1.3.1999, as the same is silent to that effect.

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7.6. On the other hand, since there is no dispute as to the entitlement of the petitioner for the waiver of sales tax to the tune of Rs.1044.21 lakhs for a period of five years, as rescheduled in the proceedings dated 16.8.1995, from 1.11.1994 to 31.10.1999 subject to the ceiling of total investment made in the fixed assets, viz. Rs.1044.21 lakhs, in our considered opinion, suffice it to strike down the restriction that the sales tax benefit for a period from 1.9.1998 to 31.10.1999 would be restricted to actual sales tax remitted during the period from 1.9.1993 to 31.10.1994, which would in turn qualify G.O.Ms.No.500, Industries (MIG-II) Department, dated 14.5.1990 in spirit and substance. Consequently, the order of the learned single judge is set aside and the writ appeal is allowed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

kpl

To

1. The State Industries Promotion
   Corporation of Tamil Nadu Limited
   No.19-A, Rukmani Lakshmipathi Road
   Egmore, Chennai 600 008.

2. The Assistant Commissioner (CT)
   Zone IV, Chennai 600 006.

3. The Assistant Commissioner (CT)
   Central Assessment Circle IV
   Chennai 600 006.

1 cc To Mr.P.S.Seetharaman, Advocate, SR.20787.
1 cc To Mr.N.Inbarajan, Advocate, SR.20214.
1 cc To The Special Government Pleader (Taxes), SR.20566.

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LA(CO)
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